

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOSE MANUEL FERNANDES,)	Case No. A 04-42
)	
Petitioner)	Civil Action No.
)	
v.)	04CV10223-MLW
)	
BRUCE CHADBOURNE)	
INTERIM DIRECTOR, U.S. BUREAU)	
OF IMMIGRATION AND CUSTOMS)	
ENFORCEMENT,)	
Respondent)	

RESPONDENT'S EX TEMPORE
REPRESENTATION OF NON-DEPORTATION

Respondent¹ has been informed by the Clerk of Court of the filing of a petition for writ of habeas corpus and stay request, and counsel for respondent has represented to the Clerk that petitioner will not be deported for at least two weeks, and not before **February 18, 2004**.

Counsel for respondent has not been served by petitioner with the petition or stay request, and has not been otherwise contacted by counsel for petitioner regarding this case. Nor does the petition -- as it appears on PACER -- as a link indicate any such service.

¹ Former INS District Director Steven Farquharson is no longer employed by the Department of Homeland Security, Bureau of Immigration and Customs Enforcement ("ICE"), but has taken a different position with the Bureau of Citizenship and Immigration Services ("BCIS"). As of a DHS restructuring effective June 9, 2003, it is understood at present that the responsive successor official of the Department of Homeland Security in the instant action is Bruce Chadbourne, Interim Field Director for Detention and Removal, Bureau of Immigration and Customs Enforcement in Boston, Massachusetts.

Respondent expects to file a return and stay opposition prior to or at the time of notification of its intent to execute the deportation order, which will be some time on or after **February 18, 2004**. Respondent therefore represents to this Court that it will not execute the deportation order against petitioner any earlier than **February 18, 2004**, and in addition will also provide the Court with at least 48 hours (two business days) advance notice of any scheduled deportation.

Respondent does not regard the petition as likely to succeed on the merits, and therefore takes the position that petitioner has failed to demonstrate that deportation should be stayed by the Court. See Arevalo v. Ashcroft, 344 F.3d 1, 9 (1st Cir. 2003) ("in sum, we hold that the applicable standard for evaluating requests for stays pending review of final orders of removal is the four-part algorithm used for preliminary injunctions"); Weaver v. Henderson, 984 F.2d 11, 12 (1st Cir. 1993) (the "sine qua non" of the preliminary injunction test is whether the movant is likely to succeed on the merits); Lancor v. Lebanon Hous. Auth., 760 F.2d 361, 362 (1st Cir. 1985) ("[o]f these four factors, the probability-of-success component in the past has been regarded by us as critical in determining the propriety of injunctive relief").

In sum, respondent represents that it will not execute the deportation order before **February 18, 2004**, and in all events will also provide the Court with two business days advance notice of deportation. Respondent expects to file its stay opposition and return before or simultaneously with any notice of intent to execute the petitioner's deportation order. Respondent takes the position that petitioner has failed to demonstrate any likelihood of success on the merits such that the Court should enter any stay of deportation.

Respectfully submitted,

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By: 

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CERTIFICATE OF SERVICE

I hereby certify that I caused true copy of the above document to be served upon counsel for petitioner by mail on February 2, 2004.


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